

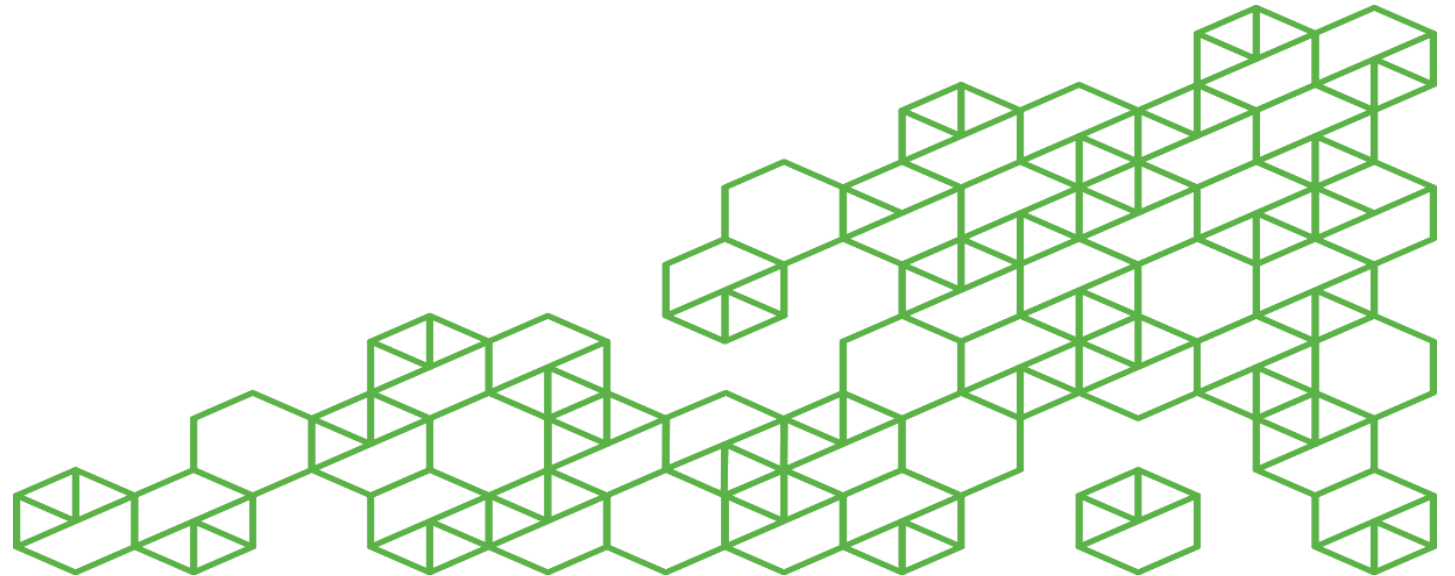
HOW TO HIRE INTERNATIONAL TALENT THROUGH H-1B VISA SPONSORSHIP

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Immigration Terms, Acronyms, & Relevant Government Agencies



IMMIGRATION TERMS

U.S. Citizen

- Birth in the U.S.
- Birth Abroad to U.S. Citizen parent or adoption
- Naturalization

Visa

- All non-immigrant visitors are required to have a valid visa to enter the U.S. (other than Canadians)
- Visas are issued outside the U.S.

U.S. Legal Resident

- “Green Card” (Immigrant)
- Permanent permission to reside and work in the U.S.
- Removal/Deportation possible

Non-immigrant

- Temporary admission to the U.S. with intent to depart
- Most non-immigrant visa classifications do not allow for intent to remain permanently

Unlawful Status

- Entered U.S. without lawful permission; or
- Overstayed lawful admission or violated immigration status

Dual Intent

- Most visas require applicant to demonstrate intent to depart, however, a few “dual intent” visas allow an applicant to possess desire to remain in U.S.

IMMIGRATION ACRONYMS

H-1B

- Worker in a specialty occupation
- Normally capped at 6 years
- Some extensions possible

EAD

- “Work Card”
- Temporary permission to work in the U.S.
- Eligibility based on classification

PERM

- Employer based permanent sponsorship for employment
- “Labor Certification”
- Does not confer employment eligibility or legal status

OPT

- Optional practical training for foreign national students
- Eligible for EAD for employment (employer’s I-9)

I-94

- Entry document governing a foreign national’s stay in the U.S.
- May, or may not, also confer employment eligibility
- Different than a “visa” which is used to enter the U.S.

RFE

- Request for Evidence
- Issued by U.S. Citizenship and Immigration Services when reviewing petitions and applications

RELEVANT GOVERNMENT AGENCIES

U.S. Department of Homeland Security (DHS): Former INS was absorbed and split into 3 separate agencies when DHS was established in 2002

U.S. Citizenship and Immigration Services (CIS): Administrative agency which administers our immigration and naturalization system (H-1B petitions, naturalization/citizenship applications, etc.)

U.S. Customs and Border Protection (CBP): Law enforcement agency which governs our borders, enforces trade, customs, and tariffs; largest federal law enforcement agency and includes the Border Patrol

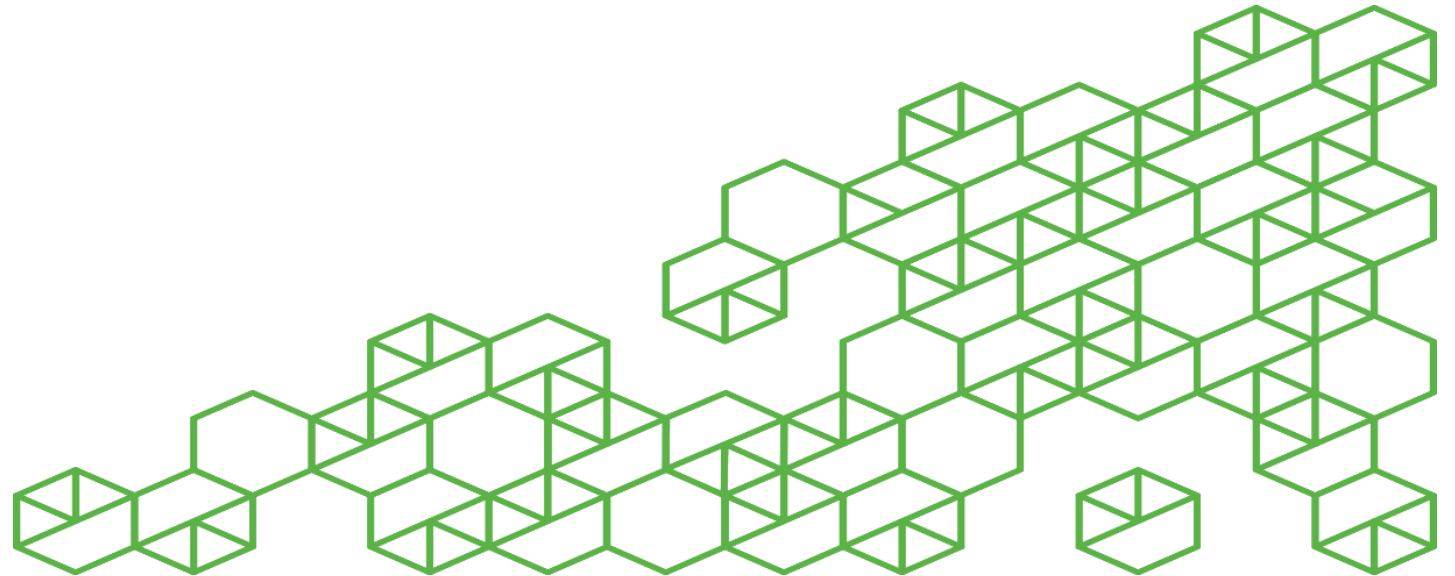
U.S. Immigration and Customs Enforcement (ICE): Law enforcement agency tasked with removal (deportation) and investigations; administers foreign student program for colleges and universities (F-1)

U.S. Department of State: Mainly involved with issuance of visas at U.S. Embassies and Consulates; also involved with some other immigration programs

U.S. Department of Labor: Mainly involved with prevailing wage determinations (H-1B, etc.) and labor certifications; mandate to protect U.S. workers



What is an H-1B Visa?



H-1B: NON-IMMIGRANT EMPLOYMENT VISA

The H-1B is an employer sponsored nonimmigrant visa classification which allows individuals who are not U.S. citizens or U.S. legal residents to work in a specialty occupation for up to six years (with limited exceptions beyond six years).

Employers must apply for the H-1B on behalf of the prospective H-1B employees through United States Citizenship and Immigration (USCIS).



H-1B: SPECIALTY OCCUPATION

The H-1B is generally reserved for *Specialty Occupations* which require the theoretical and practical application of a body of highly specialized knowledge and that requires the attainment of a bachelor's degree or higher in a specific specialty or its equivalent, as minimum for entry into the occupation in the U.S.

Examples include architecture, engineering, physical and social sciences, medicine, education, business specialties, technology, and accounting.

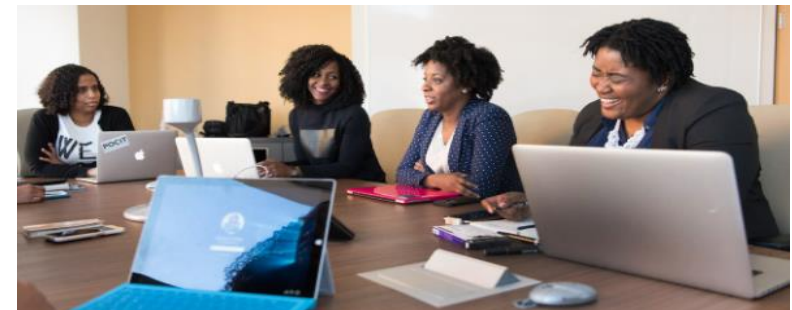


H-1B: REQUIRED WAGES

The H-1B also requires that the H-1B employer pay the H-1B employee the prevailing wage or the actual wage, whichever is higher.

The prevailing wage is the salary paid to workers in similar occupations in the geographic area of the intended employment.

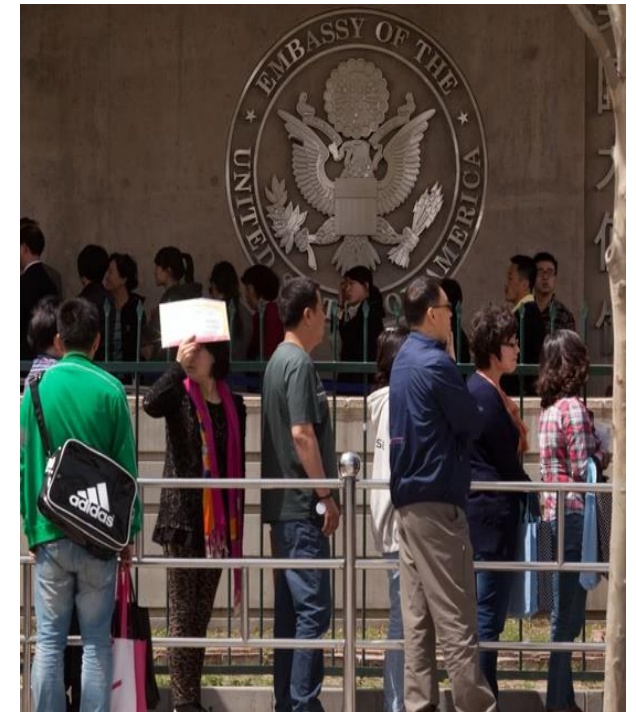
The actual wage is the wage that the employer pays employees in similar occupations at the location of the intended employment.



H-1B: NUMERICAL LIMITATION

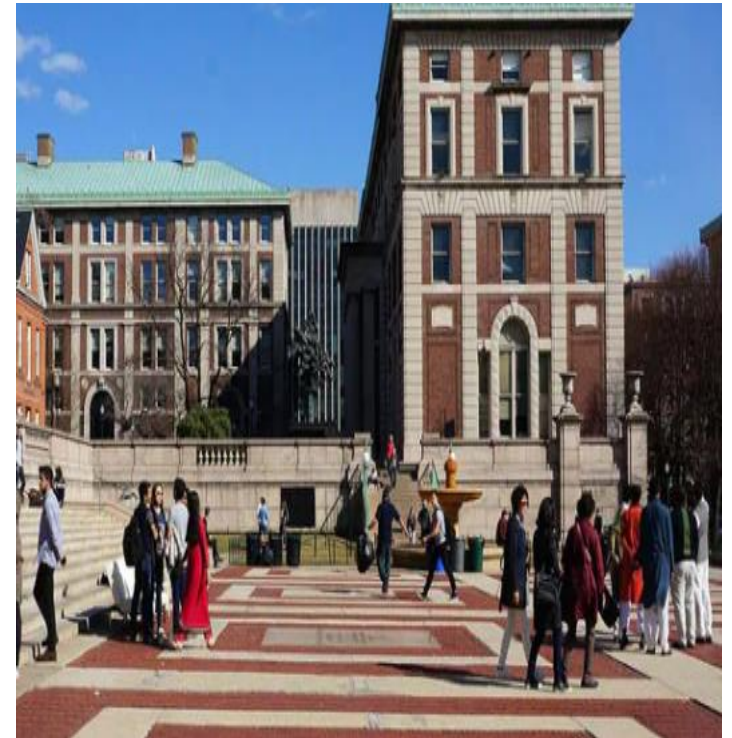
New H-1B visas are numerically limited per federal fiscal year. The federal fiscal year begins on October 1st and ends on September 30th of the following year. Current regulations set the cap at 65,000 H-1B visas.

An additional 20,000 H-1B visas are available for beneficiaries who have earned a Master's degree or higher from a U.S. institution of higher education.



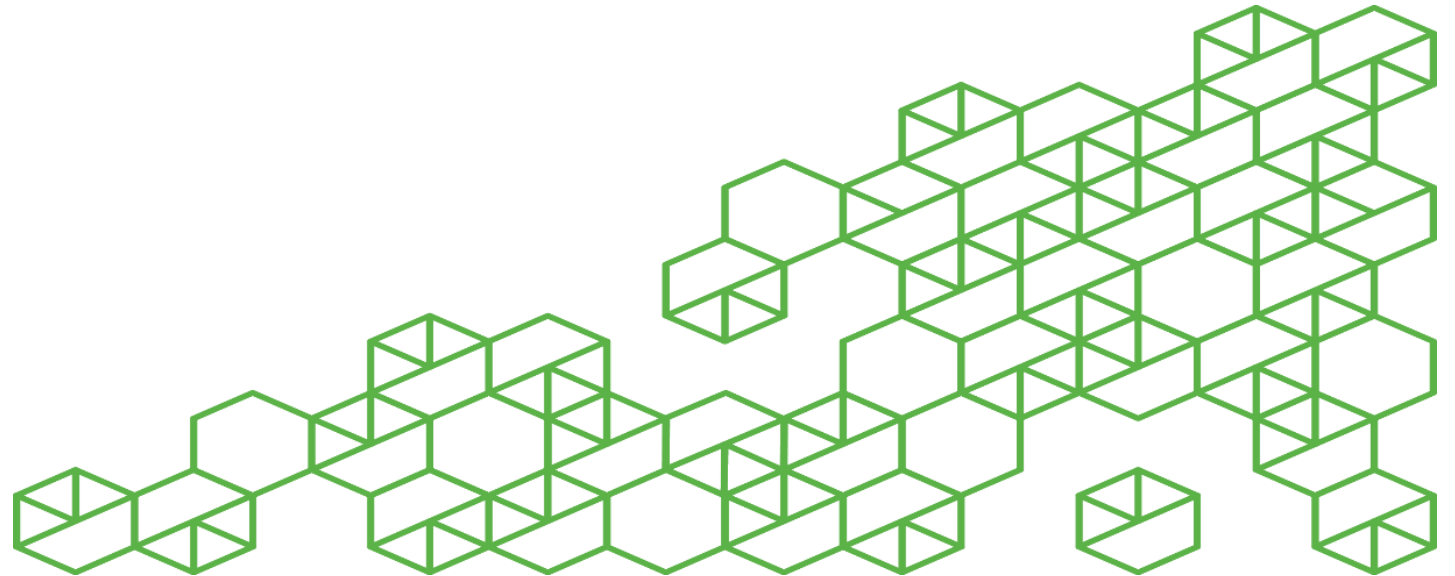
H-1B: CAP EXEMPTION

Universities and related nonprofit entities, nonprofit research organizations and government research organizations are exempt from the cap. These employers are able to submit an H-1B petition to USCIS at any time during the year without concern for the fiscal year limit. However, an individual who works for an H-1B cap-exempt employer who changes jobs to an employer that is not exempt may become subject to the H-1B cap.





H-1B Timeline & Process



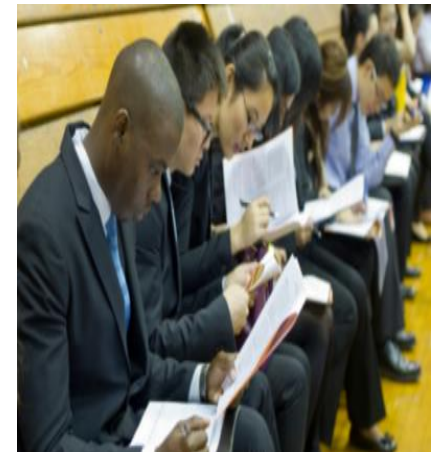
H-1B TIMELINE & PROCESS: OVERVIEW

Initial H-1B petitions, along with transfers, and renewals are officially treated the same by USCIS and are generally prepared in a similar manner. This generally takes around 30 days.

First, review the position description to see if it appears to qualify as a specialty occupation and issue spot any concerns with minimum requirements and responsibilities; determine the appropriate occupations designations by the US Department of Labor and research the prevailing wage and determine the actual wage with the employer; compare the position to the employee's credentials to determine if the employee is qualified for the specialty occupation. Modifications and edits are sometimes required at this stage (to the salary, or position requirements, and duties).

Next, prepare the labor conditional application (posting) with the US Department of Labor and the Public Access File.

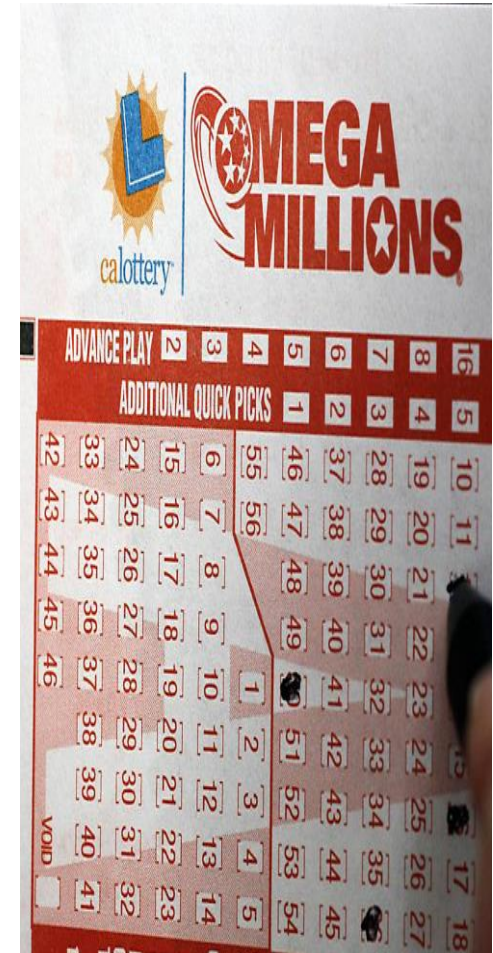
After receiving a certified labor conditional application, prepare the H-1B forms for USCIS and an employer support letter and file the petition with USCIS and await a response.



H-1B LOTTERY

In previous years, employers had a five day window each April (the first five working days in April each year), to file an H-1B petition with USCIS. Later in the spring or summer, USCIS would hold a lottery and announce the winners (and process the petition later in the year). In 2020, the H-1B lottery underwent a major change: for the first time, immigration implemented a registration process. Employers are required to register during a designated time period and provide preliminary information – not about the company but also about the sponsored employee. In late March, USCIS holds a lottery from the submitted registrations. Winners are notified and provided a 90 day window to file their petition. Subsequent drawings are possible from submitted registrations.

In fiscal year 2022 (fiscal year starts on October 1 of the preceding calendar year), USCIS received 308,613 registrations. 87,500 registrations were initially selected. 27,717 were selected in July. 16,753 were selected in November. In fiscal year 2023, USCIS received 483,927 registrations and 127,600 were initially selected.



PRECURSOR FILINGS FOR AN H-1B

An employer is required to pay a salary or wage at least the higher of the prevailing wage or actual wage for the position.

A precursor filing – and public posting- is required by the US Department of Labor prior to filing the H-1B petition attesting to the payment of at least the higher of the prevailing wage or actual wage for the position and notifying employees of the H-1B.

An employer is required to maintain a “public access file” for inspection.



H-1B TRANSFERS

Timeframe for H-1B transfers – generally, at least one month advance notice.

New employee may onboard only after USCIS has received the request to port “transfer” the H-1B; evidenced either with a “receipt notice” from USCIS or evidence of delivery and receipt of the H-1B petition by USCIS.

New employee should continue working for employer until able to transfer.

There is a cumulative 60 day grace period for unemployment.



H-1B EXTENSIONS

An H-1B may be issued for period of up-to 3 years. A renewal or extension may be possible; however, there is generally a 6 year cap for H-1Bs. After 6 years, the employee would need to leave the U.S. for one year in order to be eligible for another H-1B cycle. Extensions are generally filed around 180 to 90 days prior to expiration.

Extensions beyond the 6 year cap may be available in two scenarios:

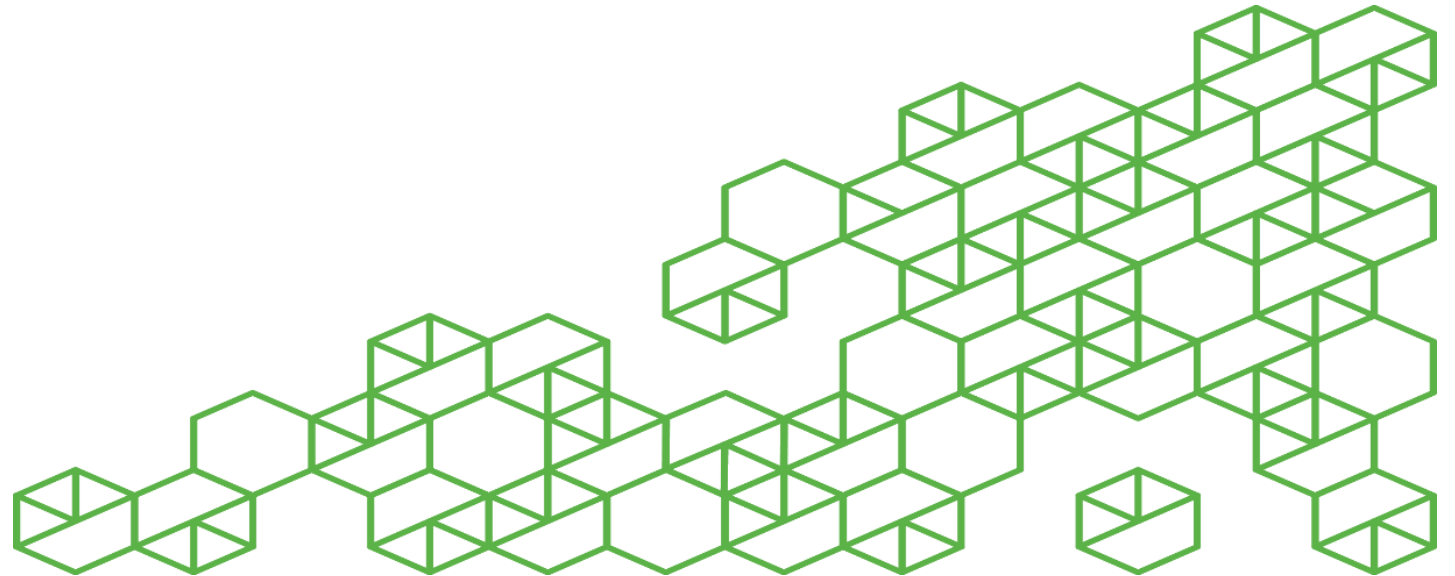
- If the employee has an approved labor certification and an I-140 petition, and their priority date is not current (an immigrant visa number is not available for them), an employer may request to extend the employee's H-1B in 3 year increments beyond the 6 year cap. This scenario often impacts Indian and Chinese national employees due to Visa Bulletin wait lists for EB-2 and EB-3 classifications.

- If an employer has filed the labor certification on behalf of the employee at least one year prior to their 6 year cap and if the case is still pending, the employer may sponsor the employee for a 1 year extension of the H-1B beyond the 6 year cap.





H-1B Eligibility & Fees



COMMON ISSUES FOR H-1B PETITIONS

Employer's position description is too vague to substantiate that the position is a specialty occupation.

Employer requires more from applicants in terms of education or experience than allowed as per norms stated by US Department of Labor for occupational classification.

Employer's salary is too low for visa sponsorship per prevailing wage data maintained by the U.S. Department of Labor.

Employee does not possess the required minimum qualifications per U.S. Department of Labor data.

Evidence is lacking to verify that the employee maintained lawful status in the U.S. (copy of all I-20s from school, copy of all academic credentials and immigration documents, and copy of all paystubs for current year and all W-2s for previous years).



H-1B FILING FEES

Current USCIS filing fees:

Lottery submission: \$10

Initial filing:

- Base filing fee of \$460
- Initial filing fee of \$500 (Fraud detection fee)
- Additional filing fee of \$1,500/\$750 based on employer size (more than 25 = \$1,500)

First renewal:

- Base filing fee of \$460
- Additional filing fee of \$1,500/\$750 based on employer size (more than 25 = \$1,500)

Subsequent renewal:

- Base filing fee of \$460

*Optional “Premium Processing Fee” of \$2,500 per filing

Immigration recently proposed a filing fee increase which may raise filing fees significantly: for example lottery registration fee from \$10 to \$215, base fee from \$460 to \$780, new \$600 asylum fee.



H-1B PROHIBITIONS

The U.S. Department of Labor generally prohibits employers from requiring employees to pay H-1B fees to include filing fees and legal fees. An H-1B worker, whether through payroll deduction or otherwise, can never be required to pay the following:

1. A penalty (as defined by state law) for the worker's failure to complete the full employment period (INA § 212(n)(2)(C)(vi)(I));
2. Any part of the statutory training and processing fee imposed by the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) (INA § 212(n)(2)(C)(vi)(II));
3. Any part of the statutory \$500 fraud protection and detection fee imposed by USCIS (INA § 214(c)(12)(A)); and/or
4. Any deduction for the employer's business expenses that would reduce an H-1B worker's pay below the required wage rate (20 C.F.R. § 655.731(c)(9)), including:
 - Any expenses, including attorney fees, directly related to the filing of the Labor Condition Application (Form ETA 9035 and/or ETA 9035E) (20 C.F.R. § 655.731(c)(9)(ii));
 - Any expenses, including attorney fees and the premium processing fee (INA § 286(u)) directly related to the filing of the Petition for Nonimmigrant Worker (Form I-129/129W) (20 C.F.R. § 655.731(c)(9)(ii) and (iii)(C));
 - Tools and equipment (20 C.F.R. § 655.731(c)(9)(iii)(C)); and
 - Travel expenses while on employer's business (20 C.F.R. § 655.731(c)(9)(ii) and (iii)(C)).



H-1B EMPLOYEE RIGHTS

H-1B employees generally hold the same rights as other employees.

One significant protection for H-1B employees is that of a required wage (higher of the prevailing wage or actual wage) and the prohibition on allowing the employee to pay or reimburse certain fees and costs related to the H-1B process.

One additional protection exists for H-1B employees - if an employer terminates an H-1B employee prior to the end date on their visa sponsorship, the employer must generally offer the employee an airline ticket home, or the cost of return transportation back to their home country.



H-1B: PROS & CONS

Benefits:

- Entry level visa
- Ease of access
- Potential for extensions
- Dual intent recognized
- Potential for H-4 EAD

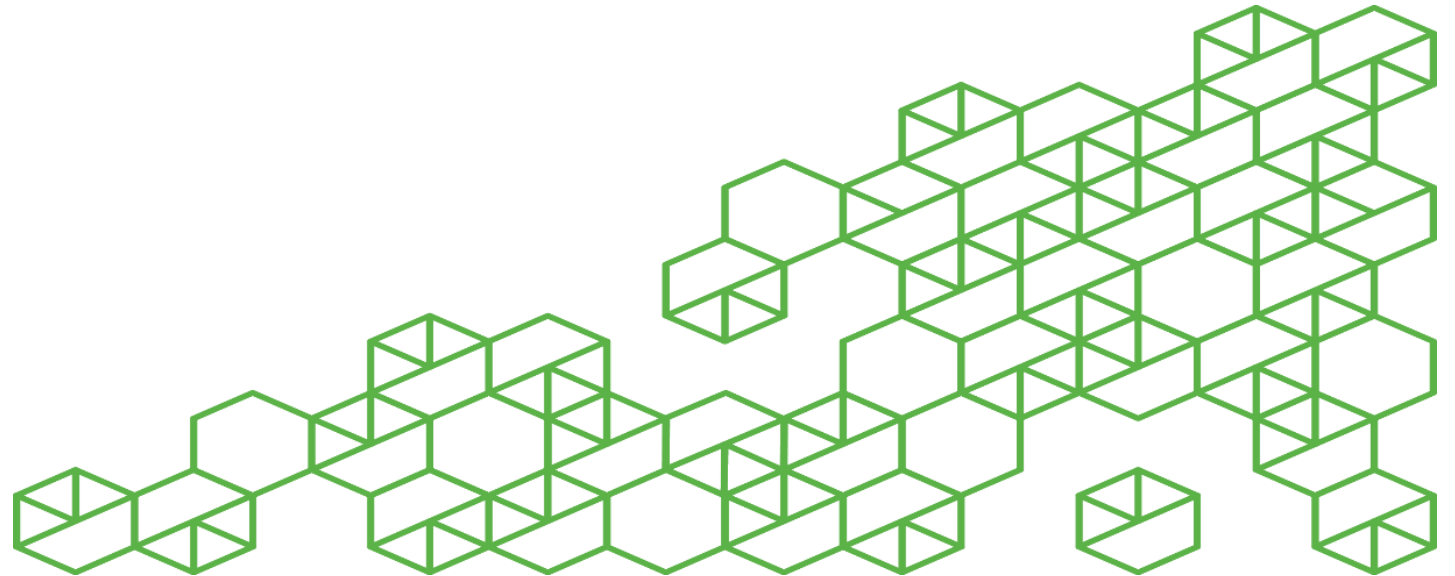


Issues:

- Limitation on stay
- Wage requirement
- Public access file
- Increased scrutiny
- RFEs and denials



Options to the H-1B: Additional Temporary Visas Classifications for Employees and Prospective Hires



F-1 STUDENT

F-1 students may obtain permission to work off campus pursuant to a grant of curricular practical training, or optional practical training.

Upon graduation, F-1 students are generally entitled to obtain one year of optional practical training employment authorization and STEM students are sometimes eligible to request an additional two years of employment authorization.



Benefits:

- Low cost
- Ease

Issues:

- Temporary
- Documents for I-9
- DSO/SEVIS/ICE
- USCIS/EAD
- STEM training plan

H-1B1 VISA

Similar to H-1B Visa

Reserved for citizens of Chile and Singapore

- May apply directly with USCIS or Consulate
- Generally more reliable, faster and less expensive than H-1B



Benefits:

- No limitation on stay
- Less documentation

Issues:

- Temporary employment
- Prevailing wage
- No dual intent

E-3 VISA FOR AUSTRALIANS

Similar to H-1B Visa

Reserved for citizens of Australia

- May apply directly with USCIS or Consulate
- Generally more reliable, faster and less expensive than H-1B



Benefits:

- No limitation on stay
- Less documentation

Issues:

- Temporary employment
- Prevailing wage
- Annual quota
- No dual intent

TN *NAFTA/USMCA* VISA

Professional Occupations – NAFTA List

Reserved for citizens of Canada and Mexico

- May apply directly with USCIS or Consulate (Mexicans), or with USCBP (Canadians)
- Generally more reliable, faster and less expensive than H-1B



Benefits:

- No limitation on stay
- No prevailing wage

Issues:

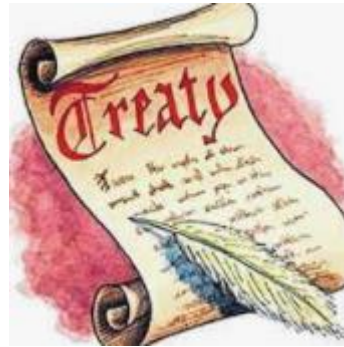
- Temporary employment
- No dual intent
- New USMCA

E VISA TREATY TRADERS & INVESTORS

Reserved for citizens of countries with specific treaties with the U.S.

Substantial trade or substantial trade required

- May apply directly with USCIS or Consulate
- Generally more reliable, faster and less expensive than H-1B



Benefits:

- No limitation on stay
- Less documentation

Issues:

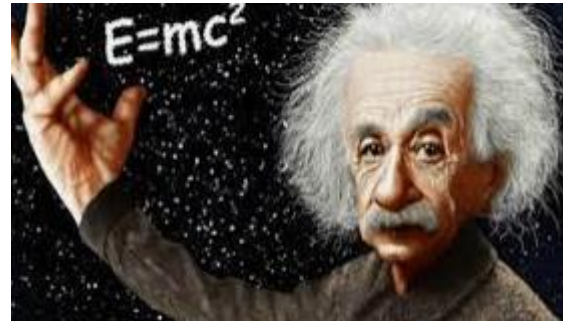
- Temporary employment
- Qualifying country
- Qualifying nationality
- Qualifying employment

O-1 EXTRAORDINARY ABILITY

Generally reserved for foreign nationals shown to have extraordinary ability in the sciences, arts, education, business, or athletics.

Prospective employees who possess substantial prior experience may be eligible for this classification.

The position does not require someone of O-1 caliber.



Benefits:

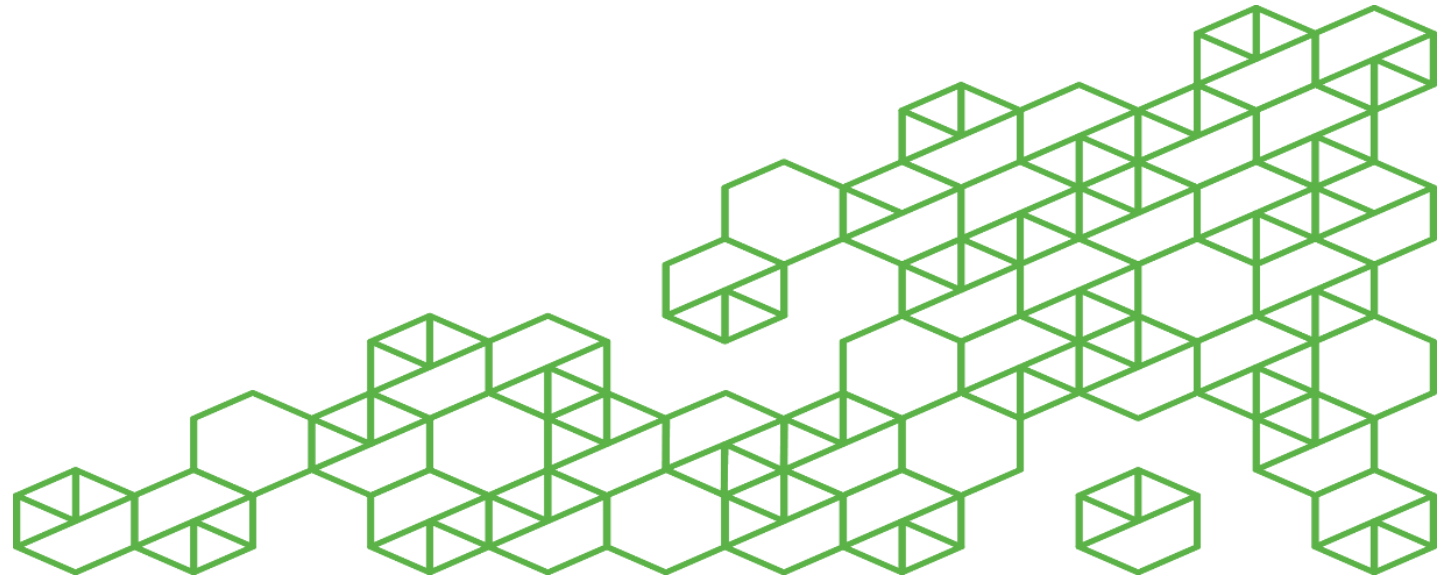
- Dual intent
- No prevailing wage

Issues:

- Limitation on stay
- Documentation
- Increased scrutiny
- RFEs and denials



Immigrant Visas - Permanent Sponsorship for Employees and Prospective Hires - a Path to Legal Residency



COMMON IMMIGRANT PREFERENCE CATEGORIES

EB-1 Priority Workers—foreign nationals with extraordinary abilities in field of endeavor, and multinational managers and executives.

EB-2 Professionals holding advanced degrees or equivalent, or persons of exceptional ability in the arts, sciences, or business.

EB-2 NIW: National Interest Waiver

Request to waive labor certification because it is in the interest of the U.S.

- The proposed endeavor has both substantial merit and national importance;
- You are well positioned to advance the proposed endeavor; and
- On balance, it would be beneficial to the U.S. to waive the requirements of a job offer, and thus the labor certification

EB-3 Professionals holding baccalaureate degrees, skilled workers, and other workers

Labor Certification *PERM*

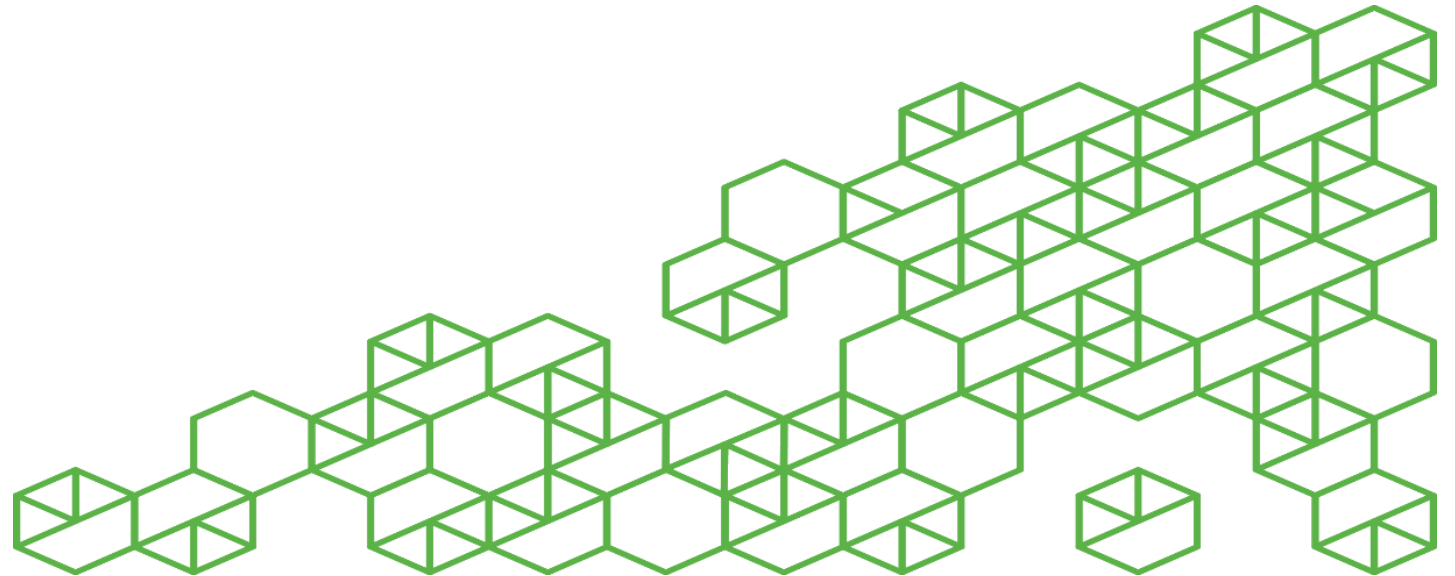
Department of Labor process governing foreign labor sponsorship

- Generally requires evidence that there are no minimally qualified and available U.S. workers
- Extensive documentation of recruitment activities to include advertisements, job postings, and state job order
- Normally does not allow for requirement of any skills or experience gained by the foreign national while employed with the petitioning employer
- Prevailing wage requirement



DELAYED

Delays in the Immigration Process



DELAYS ACROSS THE BOARD

U.S. Citizenship and Immigration Services

Unprecedented delays with adjudication of immigration services prior to pandemic. Additional delays arose in response to the pandemic. Delays persist.

U.S. Department of State

Unprecedented delays with appointments and delays for visas prior to the pandemic. Most U.S. Embassies and Consulates suspended routine visa services in response to the pandemic. Delays persist.

U.S. Department of Labor

Unprecedented delays with wage determinations and applications. This agency was least impacted by the pandemic but delays are growing.

U.S. Citizenship and Immigration Services Historical & Current Average Processing Times

Form	Classification	FY 2015	Current FY
I-129	Non-Immigrant Employment Petition	5.5 Months	3.9 Months
I-140	Immigrant Employment Petition	5.7 Months	6.2 Months
I-485	Employment Based Legal Residency	6.8 Months	14 Months
I-765	Employment Authorization (EAD)	2.6 Months	4.2 Months
N-400	Naturalization	5.6 Months	8.6 Months

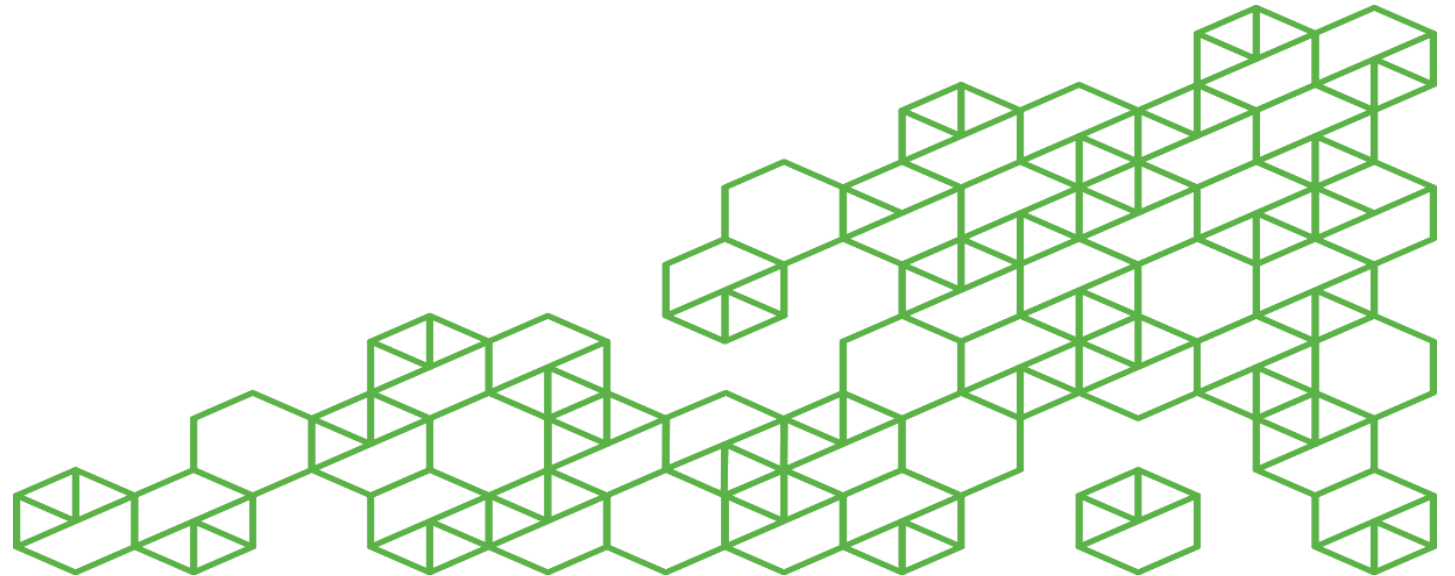
VISA BULLETIN – WAIT LIST FOR LEGAL RESIDENCY

Federal Law limits the number of available immigrant visas for U.S. Legal Residency annually to 480,000 family-sponsored visas and 140,000 employment-based visas. Immediate relatives are exempt.

- Preference classification by family relations & talent/high skills
- No rollover if visas unused
- Order based on date a petition/application is filed (*priority date*)
- Per-country limits - 7% of the total annual family-sponsored and employment-based preference limits - retrogress occurs with excessive demand



Denials in the Immigration Process



DENIALS ACROSS THE BOARD

U.S. Citizenship and Immigration Services

- Denial rate has risen 80% since FY 2017

U.S. Department of State

- Denials for both initial applications and renewals have increased

U.S. Department of Labor

- Rate of Audits have increased

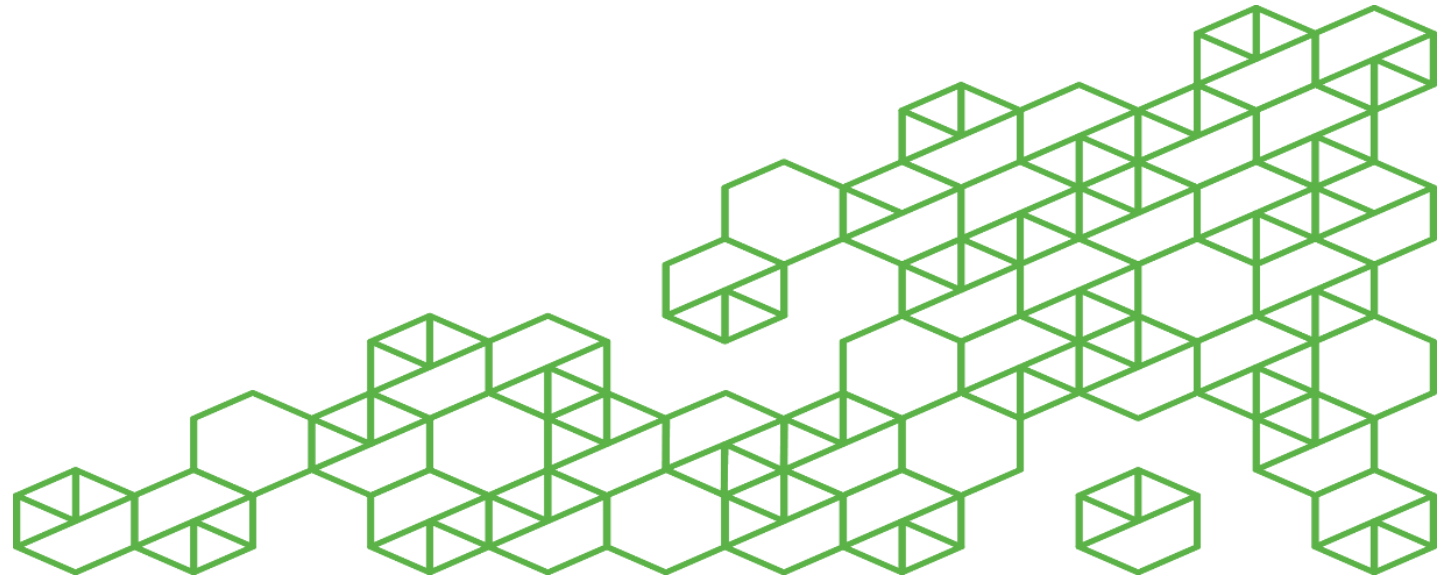
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

HISTORICAL DENIAL RATE FOR INITIAL H-1B PETITIONS

<u>Fiscal Year</u>	<u>Denial Rate</u>
2021	4%
2020	13%
2019	32%
2018	24%
2017	13%
2016	10%
2015	6%
2014	8%
2013	7%
2012	5%



Paths to U.S. Legal Residency



U.S. LEGAL RESIDENCY REQUIREMENTS

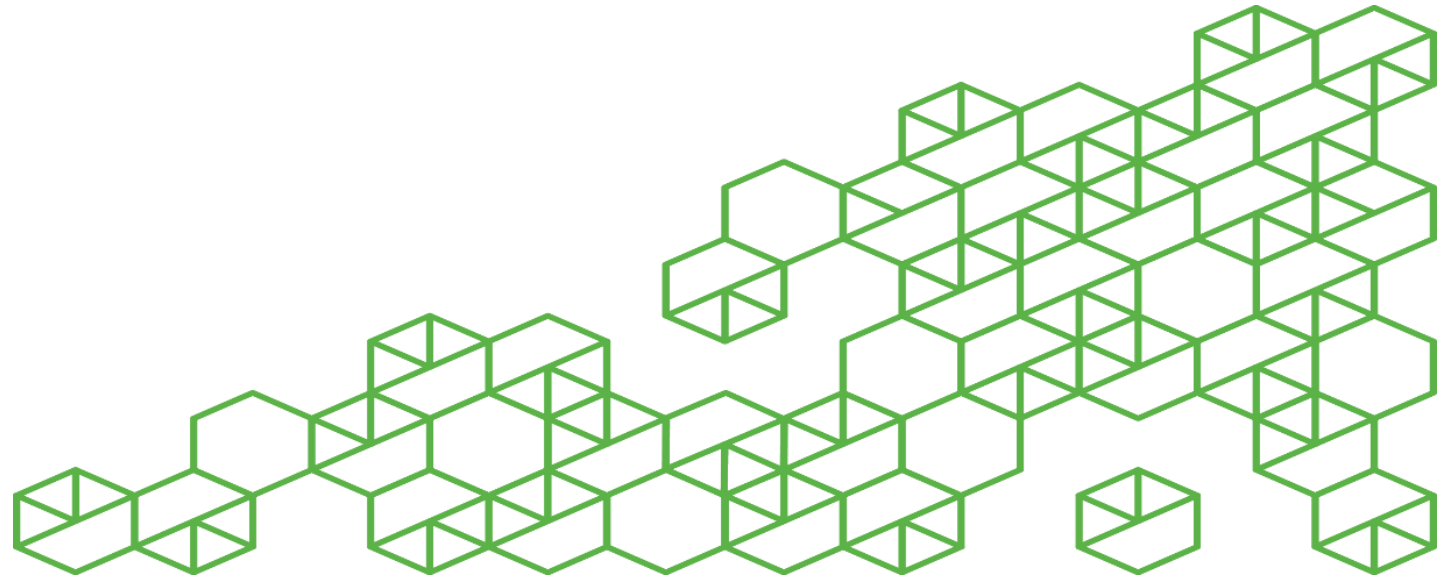
Avenues for seeking U.S. legal residency normally involve a petitioning sponsor – either through a relative or employer via an “immigrant visa.”

Certain sponsored individuals are subject to the “Visa Bulletin,” a wait list of sort. Some “immediate relatives” are exempt from this requirement – limited to spouses of U.S. citizens, parents of U.S. citizens (the citizen child must be 21 years of age or older), and minor unmarried children of U.S. citizens parents.

Some individuals, such as asylees, refugees, winners of the diversity lottery, and other limited class members are eligible to file for legal residency without a sponsor. These persons are sometimes subject to waiting periods and other eligibility requirements.



Paths to U.S. Citizenship



CITIZENSHIP REQUIREMENTS

Generally, a person acquires U.S. citizenship at birth, through their parent(s), or through naturalization.

In order to seek citizenship through naturalization, a person must normally first hold U.S. legal residency status for five years (some persons are eligible after 3 years based on an existing marriage to a U.S. citizen), and satisfy residency and other eligibility requirements. A test comprised of questions on civics, reading, and writing is normally required but there are relaxed versions for certain applicants based on age and length of U.S. legal residency.

Q&A

